

Agenda Item No. 5(e)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

21 May 2018

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED EXTINGUISHMENT OF PUBLIC FOOTPATH NO.17 (PART) –
PARISH OF WINDLEY**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make an Order for the permanent extinguishment of part of Public Footpath No. 17 in the Parish of Windley, in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent extinguishment of part of Public Footpath No. 17 in the Parish of Windley in order to facilitate the use of the land as a private garden. The garden has been in place for many years and the footpath through it is currently obstructed by fencing, hedges and trees. The extinguishment is proposed on the basis that this length of the footpath is not needed for public use as there is a nearby alternative route along a quiet tarmac road, a wide highway verge and stone-surfaced footpath.

If the proposed extinguishment takes effect, it will close approximately 55 metres of that part of the footpath shown as a bold solid line between points **A** and **B** on the appended plan. In order to get to or from the same points using Footpath No. 7 and the public road, it is necessary to travel around 90 metres, an increase of 35 metres.

No objections were received to the proposed extinguishment when informal consultations were carried out. The Local Member, Councillor David Taylor, Turnditch and Windley Parish Council and Amber Valley Borough Council were consulted and offered no objections to the proposal.

(3) **Financial Considerations** The applicant has agreed in writing to defray all of the costs in respect of making and advertising the Extinguishment Order. This includes Officer time in processing the application which is estimated to be in the region of £2,000.

(4) **Legal Considerations** An Extinguishment Order can be promoted by the County Council under Section 118 of the Highways Act 1980:

- (1) Where it appears to a council as respects a footpath in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a “public path extinguishment order”.

- (2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
- (6A) The considerations to which—
 - (a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and
 - (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

With regard to the above mentioned sections (2) and (6), the length of footpath under consideration is not currently accessible so is not used by the public at all. Nevertheless, the extinguishment proposal should be assessed as if it were accessible. In this case, it seems likely that most members of the public would choose to walk along Footpath No. 7 and Wirksworth Road, rather than pass through a private garden and feel that they might be invading someone’s privacy. This alternative route is only around 35 metres further along a quiet tarmac road, a wide highway verge and stoned track. The footpath network in this area is not heavily used, so it seems likely that the footpath would receive little use if it were available.

With regard to the above mentioned sections (6A)(b), the Rights of Way Improvement Plan, in general, seeks to improve and enhance the public rights of way network. Whilst this proposal would reduce the network, it would appear to have no appreciable negative impact.

It is concluded that the proposal satisfies the above legal criteria and that it is expedient to promote the Order.

(5) **Environmental and Health Considerations** Consideration has been given to the County Council's Rights of Way Improvement Plan in considering this application and preparing this report.

Other Considerations

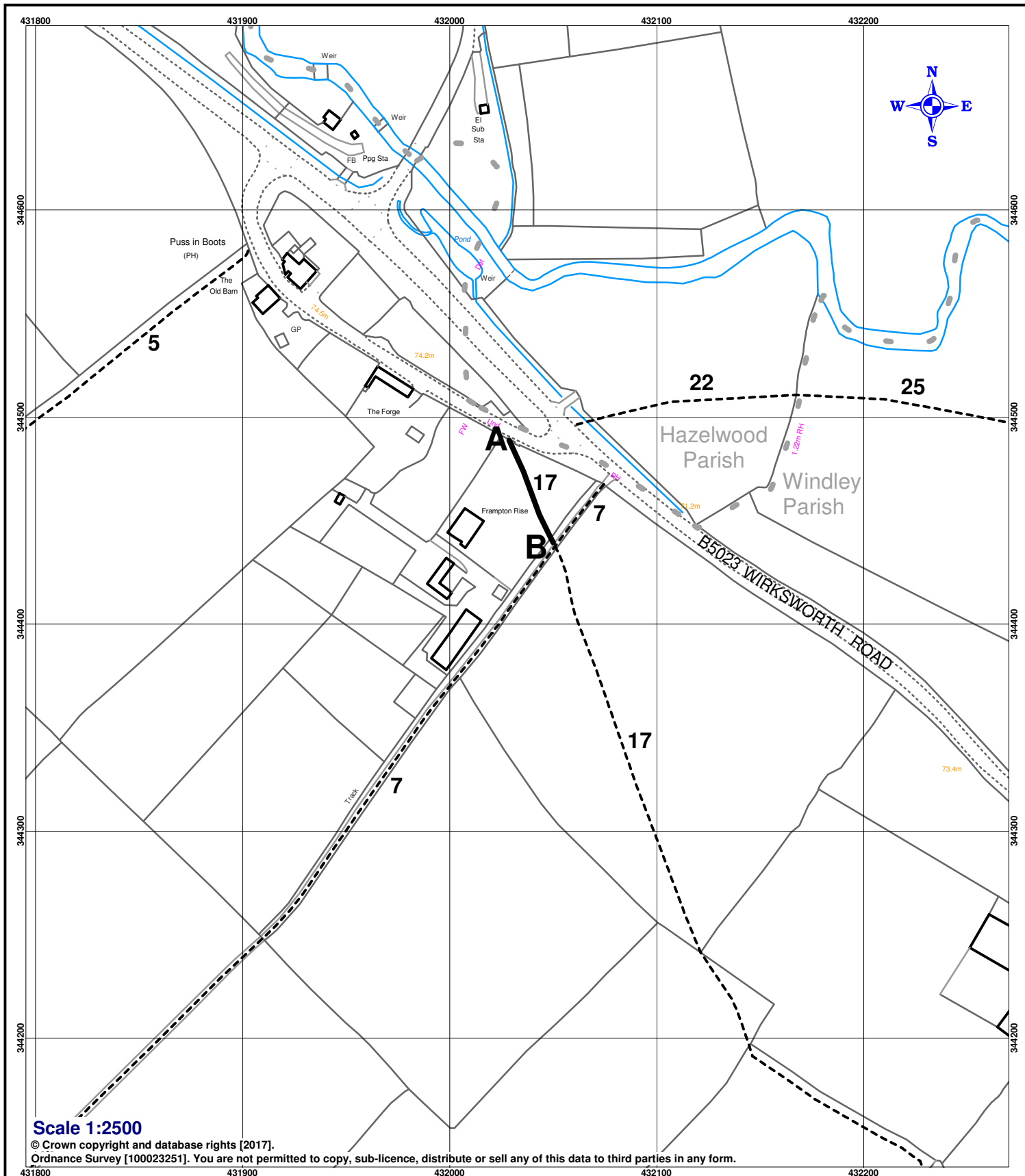
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** Held on file within the Rights of Way Section of the Economy, Transport and Environment Department. Officer contact details - David McCabe, extension 39770.

(7) **OFFICER'S RECOMMENDATIONS** That:

- 7.1 The Director of Legal Services be authorised to make the necessary Extinguishment Order on part of Public Footpath No. 17, Parish of Windley, under the provisions of Section 118 of the Highways Act 1980.
- 7.2 Should objections be received to the making of the Order that cannot be resolved, then the matter be forwarded to the Secretary of State for determination.

Mike Ashworth
Strategic Director – Economy, Transport and Environment



Ref: TE/DM/X4126/Cttee/2018
Date: 26 March 2018



Mike Ashworth
Strategic Director
Economy, Transport & Environment
Derbyshire County Council
Shand House
Dale Road South
Matlock
DE4 3RY

Highways Act 1980, Section 118

Proposed Extinguishment of Public Footpath No. 17 (Part) - Parish of Windley

Key:

- Path to be extinguished
- Other Public Footpaths
- Parish boundary

